

## **Division II. Land Use Regulations**

### **Chapter 18.70**

#### **CEQA GUIDELINES**

##### Sections:

- 18.70.010 Guidelines document--Created--Title.
- 18.70.020 Guidelines document--Administrative uses.
- 18.70.030 Guidelines document--General contents.
- 18.70.040 Guidelines document--Regulations adopted by reference.
- 18.70.050 Delegation of responsibility.
- 18.70.060 Appeal--From necessity to file EIR.
- 18.70.070 Appeal--Decisions on negative declarations.
- 18.70.080 Appeal--Filing stays director's determination.
- 18.70.090 Length of review period.
- 18.70.100 Public agencies with special expertise or jurisdiction by law.
- 18.70.110 Forms.
- 18.70.120 Guidelines document--Compilation.
- 18.70.130 Guidelines document--Available to public.
- 18.70.140 Mitigation Monitoring.

#### **18.70.010 Guidelines document--Created--Title.**

There is created a document known as the "City of Morgan Hill Guidelines for Evaluating Environmental Impacts and Reviewing Projects." (Ord. 673 N.S. § 1, 1984)

#### **18.70.020 Guidelines document--Administrative uses.**

The document referred to in Section 18.70.010 of this chapter shall be used by the city in administering its responsibilities under the California Environmental Quality Act. (Ord. 673 N.S. § 2, 1984)

**18.70.030 Guidelines document--General contents.**

The document referred to in Section 18.70.010 of this chapter shall include:

- A. The ordinance codified in this chapter and any amendments to it; and
- B. All documents incorporated by reference into this chapter. (Ord. 673 N.S. § 3, 1984)

**18.70.040 Guidelines document--Regulations adopted by reference.**

The document referred to in Section 18.70.010 of this chapter shall include the State CEQA Guidelines prescribed by the Secretary for Resources, state of California, in effect on January 1, 1993 and found in Sections 15000 et seq. of the California Administrative Code (hereinafter "Guidelines"), and these Guidelines are adopted and by this reference incorporated into this chapter as though fully set forth herein. (Ord. 1144 N.S. § 1, 1993; Ord. 673 N.S. § 4, 1984)

**18.70.050 Delegation of responsibility.**

The following delegation of responsibility is made pursuant to Section 15025 of the Guidelines. The director of the community development department shall be responsible for the following functions:

- A. Determining whether a project is exempt, ministerial or of no environmental effect;
- B. Conducting an initial study and deciding whether to prepare a draft EIR or negative declaration;
- C. Preparing a negative declaration or EIR;
- D. Determining that a negative declaration or other environmental document has been completed within a period as specified in the California Environmental Quality Act or its guidelines;
- E. Preparing responses to comments on environmental documents;
- F. Filing of notices.
- G. Approval of negative declarations for administrative project approvals that are not categorically exempt;
- H. Preparation of mitigations to negative declarations and the mitigation monitoring programs; and reviewing compliance with adopted mitigation monitoring programs after adoption of negative declarations;
- I. Determination that a project is "de minimis" in its effect on fish and game resources of the State, and therefore that payment to the State Department of Fish and Game of fees for review

of negative declarations or EIR's is unnecessary, where based upon evidence on file with the City pursuant to law;

J. Identification of bibliographic sources on which the findings of an Initial Study can be based, relative to geology, biology, traffic engineering and similar disciplines, to substantiate determinations of impacts or non-impacts;

K. Reviewing the work of consultants used in expanded initial studies and EIR's and making determinations that the work is adequate for submittal to the Planning Commission, and that such studies reflect the independent judgement of the City once modified with the director's final comments;

L. Pursuant to Section 15106 of the CEQA Guidelines, sending a draft Environmental Impact Report to the State Clearinghouse for a period of 45 days, unless the Clearinghouse allows a shorter review period. (Ord. 1144 N.S. § 2, 1993; Ord. 1121, N.S. § 1, 1993; Ord. 673 N.S. § 5, 1984)

#### **18.70.060 Appeal--From necessity to file EIR.**

Any person may appeal to the city council the community development director's final determination that a project requires an environmental impact report. The appeal shall be in writing and shall be filed with the city clerk not later than the tenth day following the date upon which the notice of preparation was first posted or mailed to the applicant. (Ord. 673 N.S. § 6(a), 1984)

#### **18.70.070 Appeal--Decisions on negative declarations.**

A. Reconsideration. Any person may request reconsideration of the community development director's decision to prepare a negative declaration. The request shall be in writing and shall be filed with the community development director not later than the tenth day following the date upon which the notice of negative declaration was first posted or mailed to the applicant. The community development director shall schedule a hearing within twenty-one days after the date of filing of the request for reconsideration. The director shall cause notice of time, date and place of the hearing to be given not less than five days prior to the subject hearing to the requestor and applicant, and to any other person who requests such in writing. The director shall advise the requestor and the applicant in writing of his decision. The decision reached by the director upon reconsideration shall be final.

B. Appeal Following Reconsideration. Any person may appeal to the city council the community development director's final decision that a project requires a negative declaration. The

appeal shall be in writing and shall be filed with the city clerk not later than the tenth day following the date upon which the requestor and applicant are notified of the community development director's final decision on a request for reconsideration. (Ord. 673 N.S. § 6(b), 1984)

**18.70.080      Appeal--Filing stays director's determination.**

The filing of the appeal pursuant to Section 18.70.060 or subsection B of Section 18.70.070 shall stay the community development director's determination until a final decision is rendered by the city council, and the decision shall be rendered within forty-five days after the filing of the appeal with the city clerk. The city clerk shall cause notice of the time, date and place of the hearing to be given not less than five days prior to subject hearing to the appellant and applicant, if he is not the appellant, and to any other person who requests such in writing. In making its determination, the council shall be guided by the same criteria as the community development director must use in making his determination. The city clerk shall advise the appellant and the applicant, if he is not the appellant, in writing of the council's decision. (Ord. 673 N.S. § 6(c), 1984)

**18.70.090      Length of review period.**

The public review period referred to in Section 15087(c) of the Guidelines shall be forty-five days from the date of the notice, unless a shorter period of time is authorized by the State Clearinghouse. A period of up to an additional sixty days may be allowed when it is determined that the draft EIR is unusually complex or lengthy, and that the additional time is necessary to allow the public adequate time to review and comment upon the draft EIR. (Ord. 1144 N.S. § 3; 1993; Ord. 673 N.S. § 7, 1984)

**18.70.100      Public agencies with special expertise or jurisdiction by law.**

The following public agencies have jurisdiction by law and/or special expertise with respect to various projects and project locations (Section 15087(f), Guidelines). Depending upon the specific project, some or all of the following agencies must be given the opportunity to review and comment upon the draft EIR:

- A.      Santa Clara County, planning and public works;
- B.      Local Agency Formation Commission of Santa Clara County;
- C.      California Department of Transportation (CalTrans);

- D. City of San Jose;
- E. Santa Clara Valley Water District;
- F. California State Regional Water Quality Control Board;
- G. California State Resources Agency (for projects of statewide concern). (Ord. 673 N.S. § 8, 1984)

**18.70.110 Forms.**

In furtherance of the duties delegated to him in Section 18.70.050 of this chapter, the community development director shall develop and utilize forms substantially similar to those found in the appendices of the Guidelines. (Ord. 673 N.S. § 9, 1984)

**18.70.120 Guidelines document--Compilation.**

The community development director shall compile the elements of the document referred to in Section 18.70.010 of this chapter, and shall make the document available for sale to the general public for a reasonable fee. (Ord. 673 N.S. § 10, 1984)

**18.70.130 Guidelines document--Available to public.**

A copy of the document referred to in Section 18.70.010 of this chapter shall be maintained in the city clerk's office at all times, and shall be made available to the public upon request. (Ord. 673 N.S. § 11, 1984)

**18.70.140 Mitigation Monitoring**

- A. The City shall maintain a program to monitor and implement mitigations of negative declarations, and Environmental Impact Reports administered by the community development director. Such mitigations may be included in any of the following:
  - 1. Separate lists of mitigations in a negative declaration;
  - 2. Conditions of any subdivision, use permit, variance, site review or other similar entitlement, which address environmental concerns;

3. Amendments to plot plans, subdivision maps or other visual exhibits, which eliminate any significant impact identified by the City through integration of mitigations into the design of the project as finally approved.

B. The monitoring program shall consist of the customary reviews by City departments for conformity of final plans and specifications with adopted requirements and mitigations. In exceptional circumstances, such as the approval of a unique and complex land use which produces measurable pollutants or other materials in need of mitigation, additional steps may be taken by the City to monitor mitigation of such impacts on an ongoing basis.

C. In the public interest, the community development director may accept reports and other forms of monitoring submitted by interested third parties, at no cost to the City, regarding the effectiveness of the mitigation measures which have been adopted. The community development director shall decide whether the reports or other monitoring submitted are accurate and provide a necessary supplement to the monitoring performed by the City, and may apply the submitted information to the monitoring program. (Ord. 1144 N.S. § 4, 1993)